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No. 91-907

Supreme Court, U.S.
FILED
DEC 26 1991
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1991

DEPARTMENT OF TAXATION AND FINANCE OF THE STATE OF NEW YORK and JAMES W. WETZLER, COMMISSIONER OF TAXATION AND FINANCE OF THE STATE OF NEW YORK and the TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK, State Campus, Albany, New York,

Petitioners,

against

MILHELM ATTEA & BROS., INC., a/k/a MILHELM ATTEA & BROTHERS, INC., a/k/a MILHEM ATTEA & BROTHERS, INC., 1509 Clinton Street, Buffalo, New York 14206,

Respondent.

(Additional Action Listed Inside Front Cover)

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE THIRD JUDICIAL DEPARTMENT.

RESPONDENTS' BRIEF IN OPPOSITION

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JAMES W. WETZLER, as Commissioner of Taxation and Finance of the State of New York; THE DEPARTMENT OF TAXATION AND FINANCE OF THE STATE OF NEW YORK and the TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK, State Campus, Albany, New York 12227,

Petitioners,

against

ELIAS H. ATTEA, JR., 6175 Stickler Street, Clarence, New York 14031,

Respondent.

QUESTION PRESENTED

Whether the court below properly applied prior decisions of this Court holding that state taxation and regulation of the sale of goods by Indian trader wholesalers to Indians on Indian reservations is pre-empted by the federal Indian trader statutes (25 U.S.C. §§261-264).

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Petitioners,

against

MILHELM ATTEA & BROS., INC., a/k/a MILHELM ATTEA & BROTHERS, INC., a/k/a MILHEM ATTEA & BROTHERS, INC., 1509 Clinton Street, Buffalo, New York 14206,

Respondent.

—0—

JAMES W. WETZLER, as Commissioner of Taxation and Finance of the State of New York; THE DEPARTMENT OF TAXATION AND FINANCE OF THE STATE OF NEW YORK and the TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK, State Campus, Albany, New York 12227,

Petitioners,

against

ELIAS H. ATTEA, JR., 6175 Stickler Street, Clarence, New York 14031,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE THIRD JUDICIAL DEPARTMENT.

RESPONDENTS' BRIEF IN OPPOSITION

The respondents respectfully request that this Court deny the petition for a writ of certiorari seeking review of the decision of the Appellate Division, Third Department of the New York State Supreme Court. The lower court's opinion is reported at 164 A.D.2d 300 (3d Dept. 1990). The New York Court of Appeals dismissed the petitioners' appeal, *sua sponte*, for lack of a substantial constitutional question.

The court below, consistent with this Court's decisions in *Warren Trading Post Co. v. Arizona State Tax Commission*, 380 U.S. 685 (1965) and *Central Machinery Company v. Arizona Tax Commission*, 448 U.S. 160 (1980), properly ruled that the state's regulatory tax scheme could not be enforced against respondents' wholesale sales of cigarettes to Indians on Indian reservations because the regulations impermissibly imposed burdens on those transactions—an area where Congress has pre-empted the field through its enactment of the Indian trader statutes (25 U.S.C. §§261-264).

The petitioners erroneously argue that the decision below conflicts with decisions of this Court permitting states to impose minimal burdens on retail transactions between tribal Indian sellers and customers who are non-members of the tribe. *See, Moe v. Confederate Salish and Kootenai Tribes*, 425 U.S. 463 (1976); *Washington v. Confederate Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980). The fallacy in petitioners' argument is that sales to non-Indians are not within the scope of the Indian trader statutes, whereas sales to Indians are. State burdens are not pre-empted in the former cases but are pre-empted in the latter.

Petitioners also misstate the decisions in *Moe* and *Colville* by claiming that they authorize states to impose "minimal burdens on Indian traders." Those cases

simply held that since the transactions under scrutiny there, retail sales to non-Indians, were not governed by the Indian trader statutes, the pre-emption analysis did not apply. *Colville*, 447 U.S. at 155-56; *Moe*, 425 U.S. at 482. The fact that the retail vendors might also have been licensed Indian traders was incidental and immaterial to the retail transactions with non-Indians. Neither *Moe* nor *Colville* approved state taxation or regulation of wholesale sales to Indians on Indian reservations, nor did they permit imposition of any state burdens on Indian traders regarding transactions governed by the federal Indian trader laws.

Petitioners mischaracterize the decision of the court below by claiming that it places "every transaction between an Indian tribe and its supplier beyond the regulatory authority of the states." Petition, p. 12. The decision below applies solely to sales to Indians made on Indian reservations. It does not apply to sales to Indians made off reservations, nor does it affect in any way the state's ability, to the extent consistent with *Moe* and *Colville*, to require retail vendors on Indian reservations to collect state taxes from non-Indian retail customers at the time of the retail sale.

PARTIES, OPINIONS BELOW, JURISDICTION AND APPLICABLE STATUTES

The references to the parties to the proceeding, to opinions below, to statements of jurisdiction and to applicable statutes, as set forth in the petition for a writ of certiorari filed by petitioners on November 26, 1991, are incorporated by reference herein.

STATEMENT OF THE CASE

Respondents Milhelm Attea & Bros., Inc.[1] ("Milhelm") and respondent Elias H. Attea, Jr. ("Elias") are federally licensed Indian traders in the business of selling cigarettes at wholesale to Indians on various Indian reservations located in New York State. Milhelm is a New York State licensed cigarette tax agent and wholesale dealer of cigarettes, but Elias is not.

Under New York Tax Law §471(1), a tax is imposed on all cigarettes possessed in New York except where the cigarettes are sold under such circumstances that the state is "without power to impose such tax." Payment of the tax is collected from purchases of stamps by agents registered by the Department of Taxation and Finance, which must be affixed to the cigarette packages as a precondition to the first taxable sale by the distributor.

The regulations at issue in this case were adopted by the New York Department of Taxation and Finance on August 29, 1988 and were to become fully effective on January 1, 1989.

The petitioners concede that the cigarette tax regulations impose burdens upon the respondents' wholesale sales to Indians on Indian reservations. Under the regulations, the respondents are liable for and must collect state cigarette taxes on all sales to their Indian customers except for certain limited quantities determined by the Department of Taxation and Finance

[1] Respondent Milhelm Attea & Bros., Inc. respectfully states that it has no corporate parents, subsidiaries or affiliates. The "also known as" designations in the caption of this case are listed as a result of typographical errors contained in documents issued by or submitted to one or more of the petitioners.

[20 NYCRR §335.7(b) (3)][2]. Prior approval of the taxing authority is required for sales made without payment of the tax [20 NYCRR §335.7(c) (2)].

The regulations further restrict the quantities of untaxed cigarettes which the respondents may sell to Indians on reservations to quotas determined by the Department of Taxation and Finance [20 NYCRR §335.7(c) and (d)]. The wholesalers are required to collect cigarette taxes from the Indians for sales in excess of the quotas. [20 NYCRR §335.6(f)(2)]. The location and quantity of the goods which the wholesaler may sell to Indians on the reservation are further restricted through a coupon rationing system administered by the Department of Taxation and Finance [20 NYCRR §335.7(d) and (e)]. The regulations also restrict respondents by permitting sales only to certain Indians required to be registered with the state as "registered dealers" [20 NYCRR §335.7(b)(1)].

The broad impact of the regulations on respondents' sales to Indians on Indian reservations is explained in Notice N-88-53, issued by the Department of Taxation and Finance (A1-6).[3] The Notice implements the state's coupon system which restricts the quantities of sales to Indians on reservations and emphasizes that persons selling amounts in excess of the state-imposed quotas

[2] Section 335 of the New York cigarette tax regulations was renumbered Section 336 as of December 19, 1990, without any substantive change. To avoid confusion, the section numbers cited in the Appendix to the Petition are used herein. Since certain sections of the regulations were consolidated and renumbered in a prior amendment (effective November 7, 1989), section references in the trial court's initial order and judgment (Supplemental Appendix to Petition, A-11) are now incorrect.

[3] Unless otherwise noted, numbers in parenthesis following the letter "A" refer to the Appendix to this brief.

must collect all applicable taxes from the Indians and will be held liable for the tax due on such excess amounts (A2, 4).

In December, 1988, the respondents brought separate actions in the New York State Supreme Court, Albany County, seeking declaratory and injunctive relief to restrain the state from enforcing the regulations or otherwise imposing state taxes or regulating the respondents' wholesale sales of cigarettes to Indians on Indian reservations. On January 18, 1989, the trial court granted a preliminary injunction striking down the regulations as applied to respondents' wholesale sales to Indians on Indian reservations.

In a June 5, 1989 decision, the trial court granted summary judgment to the respondents, finding that the issue had been previously disposed of by the New York Court of Appeals in *Herzog Bros. Trucking, Inc. v. State Tax Commission*, 69 N.Y.2d 536 (1987), vacated and remanded, 487 U.S. 1212 (1988), adhered to on remand, 72 N.Y.2d 720 (1988). On August 22, 1989 the trial court entered a judgment permanently enjoining application of the state tax scheme to respondents.

The state's appeal to the Appellate Division, Third Judicial Department, was rejected in a unanimous decision dated December 6, 1990. The Appellate Division held that the state's tax scheme fails because it imposes some burden, although only minimal, on the Indian trader contrary to the Court of Appeals interpretation of the applicable Supreme Court decisions, citing *Herzog Bros. Trucking, Inc. v. State Tax Commission, supra,* and *Warren Trading Post Company v. Arizona Tax Commission*, 380 U.S. 685 (1965).

In *Herzog*, the New York Court of Appeals held that the imposition of the state's motor fuel and sales taxes upon wholesale sales to Indians on Indian reservations and the attempted state regulation of such sales were pre-empted by the Indian Trader Statutes, 25 U.S.C. §§261-264 and regulations enacted thereunder, citing this Court's decisions in *Central Machinery Company v. Arizona Tax Commission*, 448 U.S. 160 (1980) and *Warren Trading Post Company v. Arizona State Tax Commission*, 380 U.S. 685 (1965). In *State Tax Commission of the State of New York v. Herzog Bros. Trucking, Inc.*, 487 U.S. 1212 (1988), this Court granted a petition for a writ of certiorari and vacated and remanded the case to the New York Court of Appeals for further consideration in the light of new motor fuel tax regulations then proposed by the state. The Court of Appeals then reaffirmed its earlier decision in all respects and specifically rejected the argument that its prior decision was overly broad because it barred all taxation and regulation of wholesale sales by Indian traders to Indians on Indian reservations. *Herzog Bros. Trucking, Inc. v. State Tax Commission*, 72 N.Y.2d 720 (1988). The regulations at issue in *Herzog* are substantially similar to the cigarette tax regulations at issue in this case.

On May 9, 1991, the New York Court of Appeals dismissed the state's attempt to appeal as of right, *sua sponte*, upon the ground that no substantial constitutional question was directly involved. On September 12, 1991, the state's subsequent motion for leave to appeal to the Court of Appeals was denied without opinion.

REASONS FOR DENYING THE WRIT

A. The opinion below does not conflict with any decisions of this Court, but rather expressly follows prior Supreme Court opinions recognizing that Congress has pre-empted the field of regulating wholesale transactions between Indian traders and Indian purchasers on Indian reservations.

Since enactment of the original Indian trader statutes in 1790, Congress, pursuant to Article I, Section 8 of the United States Constitution, has comprehensively regulated trade with Indians and the licensing of those who sell goods to Indians on reservations. Act of July 22, 1790, 1 Stat. 137. Under the current regulatory scheme, the Commissioner of Indian Affairs has the "sole power and authority to appoint traders to the Indian tribes and to make . . . rules and regulations . . . specifying the kind and quantity of goods and the prices at which such goods shall be sold to Indians." 25 U.S.C. §261. All persons desiring to trade with Indians are subject to the Commissioner's authority (25 U.S.C. §262) and penalties are provided for unlicensed trading, introduction of goods or residence on a reservation for the purpose of trade. 25 U.S.C. §264. The Commissioner of Indian Affairs has promulgated detailed regulations to implement these statutes. 25 CFR Part 251.

In *Warren Trading Post Company v. Arizona Tax Commission*, 380 U.S. 685, 690 (1965), the Court unanimously held that the comprehensive federal regulation of sales of goods to Indians on Indian reservations under the Indian trader statutes (25 U.S.C. §261 *et. seq.*) ". . . would seem in themselves sufficient to show that Congress has taken the business of Indian trading on reservations so fully in hand that no room

remains for state laws imposing additional burdens upon traders." In *Central Machinery Company v. Arizona Tax Commission*, 448 U.S. 160, 166 (1980), the Court reaffirmed *Warren Trading* and declared that "until Congress repeals or amends the Indian trader statutes, however, we must give them a sweep as broad as [their] language, *United States v. Price*, 383 U.S. 787, 801 (1966), and interpret them in the light of the intent of the Congress that enacted them (citations omitted)." The court below, following the lead of the New York Court of Appeals in *Herzog*, properly ruled that *Warren Trading* and *Central Machinery* were dispositive.

The petitioners' admission that the regulations burden the wholesale transaction between the respondents and their Indian customers is fatal to the state's argument. *See Warren Trading, supra*, 380 U.S. at 691 ("... no burden shall be imposed upon Indian traders for trading with Indians on reservations except as authorized by Acts of Congress ..."). Indeed, the regulations go to the very heart of the activity regulated by Congress—"the kind and quantity of goods and the prices at which such goods shall be sold to the Indians." 25 U.S.C. §261.

B. Neither *Moe* nor *Colville* stand for the proposition that states may regulate the wholesale transaction between Indian traders and their Indian customers.

In an attempt to avoid the application of *Warren Trading* and *Central Machinery*, the petitioners erroneously argue that the decision below conflicts with this Court's decisions in *Moe v. Confederated Salish and Kootenai Tribe*, 425 U.S. 463 (1976) and *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134 (1980).

In *Moe* and *Colville*, the Court approved state requirements that the Indian retailer collect and remit state taxes on retail reservation sales to non-Indian customers. Such requirements are totally independent from the wholesale transaction between the Indian retailer and his supplier. In *Colville*, the Court expressly distinguished the transaction at issue in the instant case from the retail transaction:

> The Indian trader statutes, 25 U.S.C. §261 *et seq.*, incorporate a congressional desire comprehensively to regulate businesses selling goods to reservation Indians for cash or exchange, *Warren Trading Post Co. v. Arizona Tax Commission*, 380 U.S. 685 (1965), but no similar intent is evident with respect to sales by Indians to non-members of the Tribe. 447 U.S. at 155-56.

The Court in *Colville* further stated that Indian vendors were not required to pay state taxes to their supplier because "[w]here the wholesaler or retailer is an Indian on whom the tax cannot be imposed under *McClanahan v. State Tax Commission*, 411 U.S. 164 (1973), the first taxable event is the use, consumption or possession by the non-Indian purchaser." *Colville, supra*, 447 U.S. at 142, fn. 9.

Thus, a critical distinction must be made between sales by businesses to Indians on Indian reservations and sales to non-Indians. As to the former, state taxation and regulation is pre-empted by the federal Indian trader statutes and regulations. As to the latter, involving retail sales to non-Indians, the Indian trader statutes and regulations have no application, and under *Moe* and *Colville*, a state may impose minimal burdens on Indian retailers to collect and remit state taxes from their non-Indian retail customers.

The erroneous theme of petitioners' argument is that *Moe* and *Colville* authorized burdens on "Indian traders". In fact, the Court in those decisions did not approve any state burdens on transactions within the scope of the Indian trader statutes and regulations. The fact that the retailers might also have been federally licensed Indian traders was inconsequential because the transactions under scrutiny in *Moe* and *Colville* were retail sales to non-Indians, not wholesale sales to an Indian retailer. It is the identity of the purchaser and the place of purchase which controls the application of the Indian trader statutes. Of course, cases permitting state regulation of transactions not within the scope of the Indian trader laws do not constitute authority for imposing state burdens on transactions governed by the Indian trader statutes and regulations.

Also, petitioners' citation to the off-reservation seizure of products sanctioned in *Colville* is misplaced. In that case, the products had already been purchased off the

reservation by the Indian retailers.[4] The seizure of the tribe's cigarettes off the reservation was approved as part of the regulation of the retail transactions because the Indians "... refused to fulfill collection and remittance obligations [upon them] which the State has validly imposed." *Colville*, 447 U.S. at 161-62. No transaction within the scope of the Indian trader laws was involved.

Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, _____ U.S. _____, 111 S.Ct. 905 (1991) cited by petitioners, does not represent a change in the law with respect to the pre-emptive effect of the Indian trader statutes. In *Potawatomi*, the issue was whether tribal sovereign immunity could be compromised by directly assessing taxes against a tribe for failing to collect and remit state taxes on reservation retail sales to non-members of the tribe, as required by *Moe* and *Colville*. No mention is made in *Potawatomi* of the Indian trader statutes, *Warren Trading*, or *Central Machinery*. Since *Potawatomi* did not involve regulation of the wholesale transaction between Indian traders and their tribal customers, the reference in *dicta* to relief obtained by

[4] See pretrial order entered in the district court in *Colville* which provided the stipulated facts and respective contentions of the parties, where the State of Washington contended as follows:

> 5.5 Washington may classify as "contraband" unstamped cigarettes *owned by the tribe* and intended for ultimate resale by tribally licensed retailers to non-members of the tribe in violation of state law, and may seize and sell such cigarettes in the manner prescribed by state law, whether such cigarettes are held on plaintiffs Indian reservations or are in transit in interstate commerce to plaintiffs Indian reservations from points outside the state. (emphasis supplied). *Colville, supra*, 447 U.S. 134 (1980) Record, Appendix at 53.

state tax authorities in *City Vending of Muskogee, Inc. v. Oklahoma Tax Commission*, 898 F.2d 122 (10th Cir. 1990) is not applicable to this case.[5]

Congress is the only proper forum for exploring modifications to the broad scope of the Indian trader laws. Since this Court has consistently held that Congress intended to pre-empt state authority to regulate the sale of goods by Indian traders to Indians on reservations, the balancing of divergent federal, tribal and state interests in regulating such commerce is a function reserved for Congress, and not this Court. *See, Washington v. Confederated Tribes of Colville Indian Reservation, supra*, 447 U.S. at 177 (concurring opinion of Rehnquist, *J.*).

In the absence of a conflict with any decision of this Court, and since this Court's prior decisions in *Warren Trading* and *Central Machinery* are dispositive of the issues raised herein, the petition should be denied for lack of a substantial federal question. *See, Palmer Oil Corp. v. Amerada Petroleum Corp.*, 343 U.S. 390 (1952); Sup. Ct. R. 10.

[5] In *City Vending*, the Tenth Circuit Court of Appeals held that the court lacked jurisdiction under 11 U.S.C. §505 to review a state tax administrative determination because the tax had become finally assessed prior to the filing of a bankruptcy petition by the taxpayer. The taxpayer had failed to seek timely judicial review of the assessment prior to bankruptcy. The court did not rule on the merits of the case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: December 24, 1991

APPENDIX

EXHIBIT D—NOTICE

(Seal)
Department of
TAXATION
and FINANCE

Notice to Registered Distributors of Motor Fuel, Diesel Motor Fuel and Licensed Cigarette Agents Regarding Sales of Tax-Free Product on Indian Reservations

The Department of Taxation and Finance has amended its administrative systems to permit nontaxable sales of motor fuel, diesel motor fuel and cigarettes on Native American Indian reservations (located in New York) to nations and tribes, and their enrolled members for their own personal use.

Effective January 1, 1989, only registered distributors of motor fuel and diesel motor fuel and licensed cigarette agents may sell tax-free product either to an Indian nation or to a "registered dealer," under the conditions described below. The amount of tax-free product destined for sale on each reservation is based upon a determination of the probable consumption of qualified Indian consumers on each reservation. The reservation allotment of tax-free product will then be allocated among the registered dealers located on that reservation by means of a tax exemption coupon. There are no quantity limitations of *tax-paid* product sold to an Indian nation or registered dealer on a reservation.

Tax-Free Sales to Registered Dealers

A "registered dealer" is a retail or wholesale dealer located on a reservation who registers with the Department (under this new system) to purchase tax-free product for resale to Indian nations, other registered dealers, or qualified Indian consumers. Each month registered dealers will receive "Tax Exemption Coupon for Registered Dealers" from the Tax Department entitling them to make purchases of motor fuel, diesel motor fuel and/or cigarettes on which the applicable prepaid excise and sales taxes have not been passed through.

To purchase tax-free product from you, the registered dealer must complete the tax exemption coupon, submit the Department copy (white) and the Distributor/Agent copy (pink) to you and keep the Dealer copy (yellow). The registered dealer must submit the tax exemption coupon to you before or at the time of delivery of the product.

You must keep the Distributor/Agent copy (pink) for your records and submit the Department copy (white) within 5 days of delivery of the tax-free product to the Audit Division / FACCTS—Indian matters at the address on page 4.

You may sell tax-free product *only* to the registered dealer named on the coupon and deliver the product *only* to the locations specified on the coupon. In addition, the amount of tax-free product sold may *not* exceed the preprinted amount authorized by the coupon. If the sale exceeds the preprinted amount or if you do not obtain a coupon for a sale made to a registered dealer, you *must collect all* applicable taxes from the dealer for any portion exceeding the preprinted amount of the coupon. If you fail to do so, you will be held liable for the tax due.

Tax exemption coupons will be issued in denominations of 7,500 gallons for gas and diesel fuel and 400 packs for cigarettes, unless another quantity is specified by the registered dealer. If the actual amount sold is less than the preprinted amount of the coupon, the registered dealer should indicate the actual amount purchased in the space provided and present the coupon to you. Upon receipt of the coupon from you, the Department will issue the registered dealer another coupon for the difference between the preprinted amount and the actual amount sold.

Tax-Free Sales to Indian Nations For Governmental Use

When you make a tax-free sale of motor fuel or diesel motor fuel to an Indian nation on a qualified reservation (for use or consumption and *not* for resale by such nation or tribe) you must obtain or already have a file a properly completed "Certificate of Tax Exemption for Qualified Indian Nations or Tribes on Purchases of Motor Fuel, Diesel Motor Fuel, and Cigarettes," Form FT-939, to substantiate the exempt status of the sale. (Exempt Indian nations and tribes and qualified reservations are listed on page 4.)

This exemption document *may not* be used to purchase tax-free product for *resale* by nation-owned or operated businesses.

For Resale

Nation-owned or operated businesses are subject to the reservation probable consumption limitations. Therefore, such businesses must use the tax exemption coupon as described above for registered dealers.

If the sale exceeds the preprinted amount of the coupon or if you do not obtain a coupon for a sale made to a nation business, you *must collect all* applicable taxes. If you fail to do so, you will be held liable for the tax due.

Reporting Tax-Free Sales

Distributors and agents must maintain accurate records of all sales, including the substantiation of exempt sales described above. The tax-free sales described in this notice should be reported on the schedules and monthly returns as follows:

Motor Fuel

For the motor fuel excise tax, tax-free sales must be listed on "Combined Schedules 8 and 9 — Sales to the United States Government, N. Y. State and Municipalities." Indicate the registered dealer identification number for sales made to registered dealers and tribal-businesses. Indicate the Indian nation's exempt organization number as it appears on the exemption document, Form FT-939. The total of this schedule is reported on line 13 of your "Return of Tax on Motor Fuels," Form MT-104.

For the prepaid sales tax, you take a credit for sales to exempt purchasers on line 10a of your "Report of Sales Tax Prepayment on Motor Fuel," Form FT-945.

Diesel Motor Fuel

For the diesel motor fuel excise tax, tax-free sales must be listed on "Schedule 9—Sales to the United States Government, New York State and Municipalities." Indicate the registered dealer identification number for sales made to registered dealers and tribal businesses. Indicate the Indian nation's exempt organization number

as it appears on the exemption document, Form FT-939. The total of this schedule is reported on the appropriate line of your "Return of Tax on Diesel Motor Fuel," Form MT-1000. (Line numbers on form MT-1000 are subject to change.)

For the prepaid sales tax, you take a credit for sales to exempt purchasers on line 4a of your "Report of Sales Tax Prepayment on Diesel Motor Fuel," Form FT-1045.

Cigarettes

For the cigarette excise tax, tax-free sales must be listed on "Sales of Cigarettes to Registered Dealers—Schedule D-1." Indicate the registered dealer identification number for sales made to registered dealers and tribal businesses. Indicate the Indian nation's exempt organization number as it appears on the exemption document, Form FT-939. The total of this schedule is reported on line 6B of your "Resident Agent Cigarette Tax Return," Form CG-7.

Should You Register As A Dealer?

Registered 12-A motor fuel or diesel motor fuel distributors, or licensed cigarette agents *making retail sales on Indian reservations*, must also register as dealers. You need *not* register if you merely accept tax exemption coupons from registered dealers or tribal businesses, or accept the exemption document for the nation's governmental uses (Form FT-939) from Indian nations.

Exempt Indian Nations and Tribes and Qualified Reservations

Nations and tribes

EXHIBIT D—NOTICE

State and federal law define "exempt Indian nations and tribes" as the following New York State Indian nations and tribes:

Cayuga
Oneida Indian Nation
Onondaga Nation of Indians
Poospatuck
Saint Regis Mohawk
Seneca Nation of Indians
Shinnecock
Tonawanda Band of Senecas
Tuscarora Nation of Indians

Reservations

Qualified reservations are limited to the following reservations of exempt Indian nations and tribes located in New York State.

Allegany Indian Reservation
Cattaraugus Indian Reservation
Oil Spring Indian Reservation
Oneida Indian Territory
Onondaga Indian Reservation
Poospatuck Indian Reservation
Saint Regis Indian Reservation
Shinnecock Indian Reservation
Tonawanda Indian Reservation
Tuscarora Indian Reservation

If you need additional information or an application to become a registered dealer

Call: (518) 457-0465

or

Write: NYS Department of Taxation and Finance
Audit Division/FACCTS—Indian Matters
W. A. Harriman Campus
Albany, New York 12227